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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

EPIC GAMES, INC.

Plaintiff, Counter-defendant  
 v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR

**DECLARATION OF MARK A. PERRY IN  
 SUPPORT OF APPLE INC.'S STATEMENT  
 IN SUPPORT OF SEALING**

The Honorable Yvonne Gonzalez Rogers  
 Hearing Date: May 8, 2024 (noticed date)  
 Hearing Time: 8:30 AM  
 Courtroom 1, 4th Floor

1 I, Mark A. Perry, hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar  
3 of this Court. I am a partner at the law firm Weil, Gotshal & Manges LLP, counsel of record for Apple  
4 Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential  
5 information based on my personal experience representing Apple.<sup>1</sup> I have personal knowledge of the  
6 facts stated below and, if called as a witness, would testify competently thereto. I have reviewed Epic  
7 Games, Inc.’s (“Epic”) Reply Memorandum in Support of Epic’s Motion to Enforce Injunction (the  
8 “Reply”) (Dkt. No. 923), as well as the Declaration of Ned S. Barnes, CPA (the “Barnes Declaration”)  
9 (Dkt. No. 921-1). I have also reviewed the Declaration of Alex Roman in Support of Apple’s Opposition  
10 to Epic Games Inc.’s Motion to Enforce (Dkt. No. 916-6) (the “Roman Declaration”), attesting to the  
11 confidentiality of the information that Apple has requested be sealed. Roman Decl. ¶¶ 29–31. I have  
12 reviewed Plaintiff’s Amended Administrative Motion to Consider Whether Another Party’s Material  
13 Should be Sealed Pursuant to Civil Local Rule 79-5 (the “Administrative Motion”) (Dkt. No. 926), which  
14 regards the same competitively-sensitive information designated by Apple. I understand that Epic has  
15 not opposed Apple’s Administrative Motion to Seal (Dkt. No. 916). I submit this declaration in support  
16 of Apple’s Statement in Support of Sealing (the “Statement”).

17 2. I am aware that the law of this Circuit allows information to be filed under seal for good  
18 cause or in certain compelling circumstances. I also understand that courts routinely seal filings where  
19 documents include a company’s trade secrets, confidential pricing information and analysis, confidential  
20 research and development, or other commercially sensitive information. I understand that this Court has  
21 broad latitude to prevent the public disclosure of these categories of commercially sensitive information.

22 3. Apple operates in an intensely competitive marketplace. Apple has serious and legitimate  
23 concerns that competitors will be quick to capitalize on any release of Apple’s highly sensitive  
24 information in order to gain competitive advantage. As such, Apple takes extensive measures to protect  
25

26 <sup>1</sup> Courts in the Ninth Circuit routinely grant motions to seal based on declarations of counsel. *See, e.g.,*  
27 *In re Apple Securities Litigation*, 19-cv-02033-YGR, Dkt. 223 (N.D. Cal.); *In re Qualcomm Litig.*, No.  
28 17-cv-00108-GPC, Dkt. 398-1 (S.D. Cal. Mar. 26, 2018); *Avago Techs. U.S. Inc. v. Iprtronics Inc.*, No.  
10-cv-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc. v. OpenTV Inc.*, No. 13-cv-  
00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2013). If the Court deems this declaration insufficient, Apple  
respectfully requests that it be permitted to file a further declaration supporting filing under seal.

the confidentiality of its information.

4. Consistent with Epic’s designations in the Administrative Motion, Apple proposes to seal the documents and information that, if disclosed, could harm Apple’s competitive business interests. Specifically, Apple seeks to seal in full the Barnes Declaration, along with redacted portions of the Reply.

5. Apple seeks to seal this information because disclosure of this competitively-sensitive pricing research, analysis, and decision-making, which Apple intended to keep confidential, could put Apple at a competitive disadvantage and thus cause it economic harm. Public disclosure would reveal Apple’s internal decision-making regarding financial analyses and pricing, which could be used by competitors to gain an unfair competitive advantage over Apple.

6. Apple has narrowly-tailored its sealing request so as to maximize the public’s access to court documents without jeopardizing Apple’s business interests.

7. In addition to the entirety of the Barnes Declaration, below is a chart detailing the specific portions of the Reply that are sealable for the reasons explained herein, as well as in Apple’s Statement.

Document Title	Portion of Document Sought to be Sealed	Reason to Seal
Reply	Page 1, line 23 through Page 1, line 24; between “(Dkt. 812 at 163)” and “Apple’s non-compliance”.	Reflects information regarding Apple’s financial analysis and pricing decisions.
Reply	Page 4, line 3 through Page 5, line 15; between “given no weight” and “The Declaration of”.	Reflects information regarding Apple’s financial analysis and pricing decisions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of April 2024, in Redwood Shores, California.

Dated: April 30, 2024

Respectfully submitted,

By: /s/ Mark A. Perry

Mark A. Perry